

III. REMARKS

1. Claims 33-42 and 44-62 remain in the application. Claims 1-32 and 43 have been cancelled without prejudice. Claims 36, 45, 50, 55, 57-59, and 62 have been amended.
2. Claim 58 has been amended to overcome the claim objection, the 35 USC 112, second paragraph rejection, and the 35 USC 101 rejection.
3. Claim 50 have been amended to overcome the 35 USC 112, second paragraph rejections.
4. Applicants respectfully submit that claims 33-42, 50-56, and 58 are not anticipated by Treyz et al. (US 6,587,835, "Treyz") under 35 USC 102(e).

Treyz fails to disclose or suggest a first mobile communication phone comprising:

a digital collectible card,

a memory configured to store the digital collectible card,

a circuitry configured to trade a digital collectable card associated with a user of the first mobile phone;

a detector configured to detect whether a second mobile phone is available for trading the digital collectable card; and

a short-range wireless communication transceiver configured to directly communicate with the second mobile phone for trading the digital collectable card,

wherein the detector is further arranged to detect the availability of a particular digital collectable card,

as recited by claim 36. Claim 55 is directed to similar subject matter.

4.1 Treyz fails to disclose or suggest a mobile phone comprising a digital collectable card. The specification describes various embodiments of digital collectable cards, for example, on page 1, lines 22-25 where an exemplary card has a photo, a sound, a visual screen, text about

a particular person and topic, games, a unique serial number, and the ability to download and display current information in real time. Page 4, lines 24-31 describes another exemplary card that may include streamed video, an advertisement, digital music, a video clip, an avatar feature, a dynamic user specific feature, the ability to download information in real time, and to update in response to a user request. Treyz has no disclosure related to such a digital collectable card.

4.2 The Examiner is respectfully reminded that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (See MPEP § 2131). On page 9, lines 10-11 of the present action, the Examiner explicitly states: "However, Treyz fails to explicitly disclose where the data being transferred is a digital collectable card." As stated by the Examiner, Treyz fails to disclose or suggest all the features of the present claims. In addition, a digital collectable card is not inherent in Treyz. A rejection based on inherency must include a rationale or evidence tending to show inherency.

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish inherency. ... To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference.... (MPEP 2112 quoting *In re Rijnkaert*, 9 F.3d 1531, 1534, (Fed. Cir. 1993), and *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App.&Inter. 1990), emphasis in originals).

A digital collectable card and trading a digital collectable card is not necessarily part of Treyz and therefore is not inherently disclosed by Treyz. Thus, because "Treyz fails to explicitly disclose where the data being transferred is a digital collectable card" as stated by the Examiner, and a digital collectable card is not inherent in Treyz, Treyz cannot anticipate the present claims.

Furthermore, there is no disclosure in Treyz of any structure capable of supporting, storing, or trading a digital collectable card, or detecting another mobile phone available for trading a digital collectable card. Thus, the prior art structure of Treyz is not capable of performing the "intended use" of the claimed structure.

Still further, a mobile phone comprising a digital collectable card is in fact a structural difference between the present claims and the prior art. There is nothing in Treyz related to a mobile phone comprising a digital collectable card.

Applicants note that the Examiner has substituted the word "data" for "digital collectable card" throughout the rejection. Applicants respectfully suggest that this substitution mischaracterizes Applicants claims because the digital collectable card is clearly different from any of the transactions described in Treyz.

4.3 Treyz fails to disclose or suggest a mobile phone comprising a memory configured to store the digital collectable card. Applicants note that there is nothing cited from Treyz as disclosing this feature as being necessary present.

4.4 Applicants note the Examiner's statement that Treyz discloses circuitry for exchanging data, referring to Figure 4, items 96 and 104. Applicants respectfully disagree. Applicants note that present claim 36 does not recite "circuitry for exchanging data" but rather recites "circuitry configured to trade a digital collectable card." It is clear from the specification that a digital collectable card is distinguished from "data." Regarding items 96 and 104 of Figure 4, column 14, lines 26-35 of Treyz describes item 96 of Figure 4 as follows:

Wireless communications circuitry 96 may include one or more antennas, transmitters, tunable transmitters, receivers, and tunable receivers. Wireless communications circuitry 96 may support remote wireless communications (e.g., cellular telephone communications, cellular modem communications to a terrestrial base station, satellite communications, etc.) and local wireless communications (e.g., a Bluetooth RF connection or other RF connection or an IR connection to a nearby wireless device).

Column 14, lines 49-51 include the only mention of item 104:

If desired, a Bluetooth module or other wireless communications circuitry 104 may be added as an accessory or expansion module.

Thus, there is nothing in Treyz that even suggests circuitry configured to trade a digital collectable card or any structure capable of trading a digital collectable card.

4.5 Applicants note the Examiner's statement that Treyz discloses a detector arranged to detect whether a phone is available for trading data, referring to column 45, lines 21-30. Applicants respectfully disagree. Applicants note that the present claims recite a detector

configured to detect whether a second mobile phone is available for trading the digital collectable card. Column 45, lines 21-30 of Treyz recite:

At step 688, the proximity of the user's handheld computing device 12 with respect to other handheld computing devices may be monitored. This allows reminders to be set based on criteria such as "remind me about X when I meet with Mr. Smith." When handheld computing device 12 determines that Mr. Smith's handheld computing device has come into range, the user may be provided with the reminder. Handheld computing device 12 may monitor for other handheld computing devices in the vicinity using local wireless communications.

This portion of Treyz may disclose detecting devices in the vicinity of another device, but is silent with respect to detecting whether a phone is available for trading data, as stated by the Examiner. Treyz simply detects the presence of another device, and nothing further. Monitoring for the presence of other handheld devices does not imply or suggest trading data. In addition, Treyz has no disclosure related to a detector configured to detect whether a second mobile phone is available for trading the digital collectable card, as recited by the claims.

4.6 Applicants note the Examiner's statement that Treyz discloses a transceiver for directly communicating with the second phone for trading data, and referring to Figure 4, item 94 and column 13, lines 16-37. Applicants respectfully disagree. Applicants note that the present claims recite a short-range wireless communication transceiver configured to directly communicate with the second mobile phone for trading the digital collectable card. Column 13, lines 16-37 of Treyz describe local wireless communication paths, such as 900 MHz, 2.4 GHz, optical paths (i.e. IR), Bluetooth, etc. However, there is nothing in this portion or in any other portion of Treyz related to a short-range wireless communication transceiver necessarily configured to trade a digital collectable card.

4.7 Applicants note the Examiner's statement that Treyz inherently discloses wherein the detector is further arranged to detect the availability of data, because a cellular phone is configured to be in communication with the nearest cellular phone tower and to also allow incoming calls. Applicants respectfully disagree and note that present claims recite "wherein the detector is further arranged to detect the availability of a particular digital collectable card. Furthermore, a rejection based on inherency must include a rationale or evidence tending to show inherency.

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish inherency. ... To establish inherency, the extrinsic

evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference.... (MPEP 2112 quoting *In re Rijckaert*, 9 F.3d 1531, 1534, (Fed. Cir. 1993), and *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App.&Inter. 1990), emphasis in originals).

Applicants respectfully submit that because a detector arranged to detect the availability of a particular digital collectable card is not necessarily part of Treyz, that the features of the present claims are not inherent in the cited reference. Furthermore, simply because a cellular phone is configured to be in communication with the nearest cellular phone tower and to allow incoming calls does not in any way imply or suggest that a phone is arranged to detect the availability of a particular digital collectable card.

There is nothing in this portion or in any other portion of Treyz related to a short-range wireless communication transceiver for trading a digital collectable card, and no structure disclosed as being capable of trading a digital collectable card.

At least for these reasons, Applicants submit that Treyz does not anticipate independent claims 36 and 55. Claims 32, 34, 35, 37, 38-42, 53, 54, 56 and 58 are also not anticipated at least because of their dependencies.

4.8 Dependent claim 37 is patentable over Treyz because Treyz fails to disclose or suggest a first mobile communication phone further arranged to determine whether a first and second mobile phone are in the same cell of a cellular mobile communication network. The Examiner cites column 45, lines 21-30 of Treyz and states that monitoring if a second phone is in the vicinity would require that the phone is in the same cell. Column 45, lines 21-30 are reproduced above and simply state that the proximity of the user's handheld computing device with respect to other handheld computing devices may be monitored. There is nothing in this portion or any other portion of Treyz that even suggests a mobile communication phone arranged to determine whether a first and second mobile phone are in the same cell of a cellular mobile communication network.

Applicants further respectfully submit that monitoring if a second phone is in the vicinity would not require that the phone is in the same cell. Column 13, lines 16-37, cited by the Examiner in other rejections describes various local communication paths that do not use cellular communication. Furthermore, it would be obvious to one skilled in the art that two phones in

different cells might each be on the perimeter of adjacent cells and still be in the vicinity of each other.

Applicants respectfully submit that this feature is not common knowledge or well known in the art because such a feature is not capable of instant and unquestionable demonstration as being well known. Furthermore, determining whether these features are, or are not common knowledge or well known in the art requires specific knowledge of the prior art which must be supported with a reference.

4.9 Claim 38 is directed to sending confirmation and registration messages to a server administering the digital collectable card. Treyz has no disclosure related to this feature. Applicants note that the Examiner has failed to cite any particular portion of Treyz as anticipating this feature. Contrary to the Examiner's assertion, Applicants note that logging into a cellular network is remarkably different from logging into a wire communication network. Not only are the communication protocols significantly different, call set up, tear down, and transmissions include remarkably different technologies and procedures. Regardless, there is nothing in Treyz related to sending confirmation and registration messages to a server administering the digital collectable card.

Claims 56 and 58 recite sending a registration message of the trade to a network entity. There is nothing in Treyz related to this feature for the same reasons argued above.

4.10 Treyz fails to disclose or suggest a first mobile communication phone, further arranged to determine whether another digital collectable card is available, as recited by claim 41.

Applicants note the Examiner's continued substitution of the word "data" for the phrase "digital collectable card" in the claims and again note that this substitution mischaracterizes the claims because the digital collectable card has no relationship to any of the transactions described in Treyz. Column 10, lines 9-32, cited by the Examiner, describes how a hand held computing device may be used to obtain information and products. There is nothing related to determining whether another digital collectable card is available anywhere in Treyz.

5. Treyz fails to disclose or suggest a system for trading a plurality of digital collectable cards comprising:

a first digital collectible card;

a first mobile phone configured to store the first digital collectible card of the plurality of digital collectable cards, wherein the system is configured to detect the availability of the first card, and wherein the first digital collectible card is configured to be associated with a user of the first mobile phone;

a second mobile phone having a second user, wherein the second mobile phone is capable for associating the second user with the first card, the second mobile phone configured to determine if the first mobile phone is in the vicinity of the second mobile phone;

wherein the first and second mobile phones both comprise a short-range wireless communication transceiver configured to directly communicate between the first and second mobile phones so that the first digital collectible card can be traded, and wherein the first mobile phone is configured to detect whether the second mobile phone is available for trading the first card,

as recited by claim 50.

5.1 Treyz fails to disclose or suggest a system for trading digital collectable cards, comprising a digital collectable card. As argued above, the present specification describes various embodiments of digital collectable cards. Treyz has no disclosure related to such a digital collectable card. In addition, there is no disclosure in Treyz of any structure capable of supporting, storing, or trading a digital collectable card, or detecting another mobile phone available for trading a digital collectable card. Thus, the prior art structure of Treyz is not capable of performing the "intended use" of the claimed structure.

Furthermore, a system comprising a digital collectable card is in fact a structural difference between the present claims and the prior art. There is nothing in Treyz related to a system for trading digital collectable cards.

As noted above, the Examiner has substituted the word "data" for "digital collectable card" throughout the rejection. Applicants respectfully suggest that this substitution mischaracterizes Applicants claims because the digital collectable card is clearly different from any of the transactions described in Treyz.

5.2 Treyz fails to disclose or suggest a first mobile phone configured to store the first digital collectible card of the plurality of digital collectable cards, wherein the system is configured to detect the availability of the first card, and wherein the first digital collectible card is configured to be associated with a user of the first mobile phone. Treyz has no facility for storing a digital collectable card. Furthermore, Treyz has no disclosure related to detecting the availability of a first card, and nothing related to the first digital collectible card being configured to be associated with a user of the first mobile phone. Figure 2, item 12, cited by the Examiner, is a handheld computing device and there is no disclosure in Treyz that the device has any of these characteristics.

Furthermore, Applicants note that logging into a cellular network is remarkably different from logging into a wire communication network. Not only are the communication protocols significantly different, call set up, tear down, and transmissions include remarkably different technologies and procedures. Nevertheless, there is nothing in Treyz related to a first mobile phone configured to store the first digital collectible card of the plurality of digital collectable cards, wherein the system is configured to detect the availability of the first card, and wherein the first digital collectible card is configured to be associated with a user of the first mobile phone.

5.3 Treyz also fails to disclose or suggest a second mobile phone having a second user, wherein the second mobile phone is capable for associating the second user with the first card, the second mobile phone configured to determine if the first mobile phone is in the vicinity of the second mobile phone. Treyz is incapable of associating a second user with a first card. Treyz has no disclosure related to digital collectable cards and no disclosure related to associating any users with any digital collectable cards. Column 45, lines 21-30, cited by the Examiner, simply state that the proximity of the user's handheld computing device with respect to other handheld computing devices may be monitored and has nothing to do with associating a second user with a first card.

5.4 Treyz also fails to disclose or suggest a transceiver configured to directly communicate between the first and second mobile phones so that the first digital collectible card can be traded, and wherein the first mobile phone is configured to detect whether the second mobile phone is available for trading the first card. Column 13, lines 16-37, cited by the Examiner, describes various local communication paths that do not use cellular communication and

column 45, lines 21-30, cited by the Examiner, state that the proximity of the user's handheld computing device with respect to other handheld computing devices may be monitored. Neither portion of Treyz has anything related to communicating between mobile phones so that a digital collectible card can be traded, and neither reference discloses or suggests detecting whether a second mobile phone is available for trading the first card.

At least for these reasons, Applicants submit that Treyz does not anticipate independent claim 50 and dependent claims 51 and 52.

5.5 Dependent claim 52 is also patentable over Treyz because Treyz fails to disclose or suggest a cellular mobile communication network including a means for determining whether a first and second mobile phone are in the same cell of the cellular mobile communication network. The Examiner cites column 45, lines 21-30 of Treyz and states that monitoring if a second phone is in the vicinity would require that the phone is in the same cell. Column 45, lines 21-30 are reproduced above and simply state that the proximity of the user's handheld computing device with respect to other handheld computing devices may be monitored. There is nothing in this portion or any other portion of Treyz that even suggests a mobile communication phone arranged to determine whether a first and second mobile phone are in the same cell of a cellular mobile communication network.

Applicants further respectfully submit that monitoring if a second phone is in the vicinity would not require that the phone is in the same cell. Column 13, lines 16-37, cited by the Examiner in other rejections describes various local communication paths that do not use cellular communication. Furthermore, it would be obvious to one skilled in the art that two phones in different cells might each be on the perimeter of adjacent cells and still be in the vicinity of each other.

Applicants respectfully submit that this feature is not common knowledge or well known in the art because such a feature is not capable of instant and unquestionable demonstration as being well known. Furthermore, determining whether these features are, or are not common knowledge or well known in the art requires specific knowledge of the prior art which must be supported with a reference.

6. Applicants respectfully submit that claims 33-42, 50-56 and 58 are patentable over the combination of Treyz and Filler et al. (WO 00/11827, "Filler") under 35 USC 103(a).

The combination of Treyz and Filler fails to disclose or suggest a first mobile communication phone comprising:

a digital collectible card,

a memory configured to store the digital collectible card,

a circuitry configured to trade a digital collectable card associated with a user of the first mobile phone;

a detector configured to detect whether a second mobile phone is available for trading the digital collectable card; and

a short-range wireless communication transceiver configured to directly communicate with the second mobile phone for trading the digital collectable card,

wherein the detector is further arranged to detect the availability of a particular digital collectable card,

as recited by claim 36. Claim 55 is directed to similar subject matter.

6.1 Neither reference discloses or suggest a mobile phone comprising a digital collectable card or a mobile phone comprising a memory configured to store a digital collectable card.. Treyz discloses a handheld computing device that provides shopping services. While column 9, lines 60-63 discloses that "a cellular phone with computing capabilities may be able to perform some of the functions," column 9, lines 63-66 discloses that "For many functions, handheld computers may be preferable to cellular telephones. Handheld computers generally have larger screens than cellular telephones and have superior computing capabilities." Thus, Treyz teaches away from utilizing a cellular telephone because Treyz admits that a cellular phone is only capable of performing some of the disclosed functions as opposed to all, and that a cellular phone lacks the screen size and computing power of a handheld computer. Furthermore, there is nothing in Treyz that indicates a mobile phone comprising a digital collectable card, a mobile phone comprising a memory configured to store a digital collectable card, or that a mobile phone might be used for trading digital collectable cards.

Filler discloses a network based system for distributing, collecting, playing, and trading digital trading cards. A server communicates with Windows 486 based PC's or MacOS 7.5+ Power

PC's through modems or LAN cards. There is no mention anywhere of a mobile phone or anything related to mobile phone technology, and nothing related to a mobile phone comprising a digital collectable card or a mobile phone comprising a memory configured to store a digital collectable card.

6.2 Applicants respectfully submit that neither Treyz nor Filler disclose or suggest a mobile communication phone comprising circuitry configured to trade a digital collectable card.

Applicants respectfully disagree with the Examiner's statement that Treyz discloses circuitry for exchanging data, referring to Figure 4, items 96 and 104. As argued above, Applicants note that present claim 36 does not recite "circuitry for exchanging data" but rather recites "circuitry configured to trade a digital collectable card." It is clear from the present specification that a digital collectable card is distinguished from "data." As argued above, items 96 and 104 of Figure 4 are wireless communication circuitry and a Bluetooth module, respectively, but have nothing to do with a mobile communication phone comprising circuitry configured to trade a digital collectable card.

Filler has nothing related to mobile telephone communication at all, let alone a mobile communication phone comprising circuitry configured to trade a digital collectable card.

6.3 Neither reference discloses or suggests a mobile communication phone comprising a detector configured to detect whether a second mobile phone is available for trading the digital collectable card; wherein the detector is further arranged to detect the availability of a particular digital collectable card.

As argued above, Applicants respectfully disagree with the Examiner's statement that Treyz discloses a detector arranged to detect whether a phone is available for trading data, referring to column 45, lines 21-30. Applicants again note that the present claims recite a detector configured to detect whether a second mobile phone is available for trading the digital collectable card. Column 45, lines 21-30 of Treyz describes monitoring for another hand held computing device but does not disclose detecting whether a phone is available for trading data, as stated by the Examiner, and has no disclosure related to a detector configured to detect whether a second mobile phone is available for trading the digital collectable card, as recited by the claims.

Filler has no disclosure related to mobile phones and no disclosure related to detecting whether a second mobile phone is available for trading the digital collectable card.

As argued above, Applicants respectfully disagree with the Examiner's statement that Treyz inherently discloses wherein the detector is further arranged to detect the availability of data, because a cellular phone is configured to be in communication with the nearest cellular phone tower and to also allow incoming calls. Applicants respectfully disagree and note that present claims recite "wherein the detector is further arranged to detect the availability of a particular digital collectable card. As argued above, a rejection based on inherency must include a rationale or evidence tending to show inherency, and because a detector arranged to detect the availability of a particular digital collectable card is not necessarily part of Trez, this feature of the present claims are not inherent in Tryz. In addition, a cellular phone, configured to be in communication with the nearest cellular phone tower and to allow incoming calls does not imply or suggest that a phone is arranged to detect the availability of a particular digital collectable card.

6.4 Neither reference discloses or suggests a mobile communication phone comprising a a short-range wireless communication transceiver configured to directly communicate with the second mobile phone for trading the digital collectable card.

As argued above, Applicants disagree with the Examiner's statement that Treyz discloses a transceiver for directly communicating with the second phone for trading data, referring to Figure 4, item 94 and column 13, lines 16-37. Applicants note that the present claims recite a short-range wireless communication transceiver configured to directly communicate with the second mobile phone for trading the digital collectable card. Column 13, lines 16-37 of Treyz describe local wireless communication paths, such as 900 MHz, 2.4 GHz, optical paths (i.e. IR), Bluetooth, etc. There is nothing in this portion or in any other portion of Treyz related to a short-range wireless communication transceiver for trading a digital collectable card, and no structure disclosed as being capable of trading a digital collectable card.

Filler has no disclosure related to a transceiver, and no disclosure related to a short-range wireless communication transceiver configured to directly communicate with the second mobile phone for trading the digital collectable card.

Because the combination of Treyz and Filler fails to disclose or suggest all the elements of claims 36 and 55, the combination of Treyz and Filler fails to render independent claims 36 and 55 unpatentable. Claims 32, 34, 35, 37, 38-42, 53, 54, 56 and 58 are patentable at least because of their dependencies.

6.5 Dependent claim 37 is patentable over the combination of Treyz and Filler because the combination of Treyz and Filler fails to disclose or suggest a first mobile communication phone further arranged to determine whether a first and second mobile phone are in the same cell of a cellular mobile communication network. As argued above, the Examiner cites column 45, lines 21-30 of Treyz and states that monitoring if a second phone is in the vicinity would require that the phone is in the same cell. Column 45, lines 21-30 are reproduced above and simply state that the proximity of the user's handheld computing device with respect to other handheld computing devices may be monitored. There is nothing in this portion or any other portion of Treyz that even suggests a mobile communication phone arranged to determine whether a first and second mobile phone are in the same cell of a cellular mobile communication network.

Applicants further respectfully submit that monitoring if a second phone is in the vicinity would not require that the phone is in the same cell. Column 13, lines 16-37, cited by the Examiner in other rejections describes various local communication paths that do not use cellular communication. Furthermore, it would be obvious to one skilled in the art that two phones in different cells might each be on the perimeter of adjacent cells and still be in the vicinity of each other.

Applicants respectfully submit that this feature is not common knowledge or well known in the art because such a feature is not capable of instant and unquestionable demonstration as being well known. Furthermore, determining whether these features are, or are not common knowledge or well known in the art requires specific knowledge of the prior art which must be supported with a reference.

6.6 The combination of Treyz and Filler fails to disclose or suggest a first mobile communication phone further arranged to determine whether another digital collectable card is available, as recited by claim 41.

Applicants note the Examiner's continued substitution of the word "data" for the phrase "digital collectable card" in the claims and again note that this substitution mischaracterizes the claims

because the digital collectable card has no relationship to any of the transactions described in Treyz. Column 10, lines 9-32, cited by the Examiner, describes how a hand held computing device may be used to obtain information and products. There is nothing related to a first mobile communication phone arranged to determine whether another digital collectable card is available anywhere in Treyz or Filler.

7. The combination of Treyz and Filler fails to disclose or suggest a system for trading a plurality of digital collectable cards comprising:

- a first digital collectible card;

- a first mobile phone configured to store the first digital collectible card of the plurality of digital collectable cards, wherein the system is configured to detect the availability of the first card, and wherein the first digital collectible card is configured to be associated with a user of the first mobile phone;

- a second mobile phone having a second user, wherein the second mobile phone is capable for associating the second user with the first card, the second mobile phone configured to determine if the first mobile phone is in the vicinity of the second mobile phone;

- wherein the first and second mobile phones both comprise a short-range wireless communication transceiver configured to directly communicate between the first and second mobile phones so that the first digital collectible card can be traded, and wherein the first mobile phone is configured to detect whether the second mobile phone is available for trading the first card,

as recited by claim 50.

7.1 The combination of Treyz and Filler fails to disclose or suggest a first mobile phone configured to store the first digital collectible card of the plurality of digital collectable cards, wherein the system is configured to detect the availability of the first card, and wherein the first digital collectible card is configured to be associated with a user of the first mobile phone. Neither Treyz nor Filler discloses a mobile phone configured to store a digital collectable card. Furthermore, neither reference has any disclosure related to the first digital collectible card being configured to be associated with a user of the first mobile phone. Figure 2, item 12, cited

by the Examiner, is a handheld computing device and there is no disclosure in Treyz or Filler of a device having any of these characteristics.

Furthermore, Applicants again note that logging into a cellular network is remarkably different from logging into a wire communication network. Not only are the communication protocols significantly different, call set up, tear down, and transmissions include remarkably different technologies and procedures. Nevertheless, there is nothing in Treyz or Filler related to a first mobile phone configured to store the first digital collectible card of the plurality of digital collectable cards, wherein the first digital collectible card is configured to be associated with a user of the first mobile phone.

7.2 The combination of Treyz and Filler also fails to disclose or suggest a second mobile phone having a second user, wherein the second mobile phone is capable for associating the second user with the first card, the second mobile phone configured to determine if the first mobile phone is in the vicinity of the second mobile phone. Treyz is incapable of associating a second user with a first card. Treyz has no disclosure related to digital collectable cards and no disclosure related to associating any users with any digital collectable cards. Column 45, lines 21-30, cited by the Examiner, simply state that the proximity of the user's handheld computing device with respect to other handheld computing devices may be monitored and has nothing to do with associating a second user with a first card. Filler has no disclosure related to a second mobile phone having a second user, wherein the second mobile phone is capable for associating the second user with the first card, the second mobile phone configured to determine if the first mobile phone is in the vicinity of the second mobile phone.

7.3 The combination of Treyz and Filler also fails to disclose or suggest a transceiver configured to directly communicate between the first and second mobile phones so that the first digital collectible card can be traded, and wherein the first mobile phone is configured to detect whether the second mobile phone is available for trading the first card. Column 13, lines 16-37 of Treyz, cited by the Examiner, describes various local communication paths that do not use cellular communication and column 45, lines 21-30, cited by the Examiner, state that the proximity of the user's handheld computing device with respect to other handheld computing devices may be monitored. Neither portion of Treyz has anything related to communicating between mobile phones so that a digital collectible card can be traded, and neither reference

discloses or suggests detecting whether a second mobile phone is available for trading the first card. Filler is silent with respect to these features.

At least for these reasons, Applicants submit that the combination of Treyz and Filler fails to render independent claim 50 and dependent claims 51 and 52 unpatentable.

7.4 Dependent claim 52 is also patentable over the combination of Treyz and Filler because neither reference discloses or suggests a cellular mobile communication network including a means for determining whether a first and second mobile phone are in the same cell of the cellular mobile communication network. The Examiner cites column 45, lines 21-30 of Treyz and states that monitoring if a second phone is in the vicinity would require that the phone is in the same cell. Column 45, lines 21-30 are reproduced above and simply state that the proximity of the user's handheld computing device with respect to other handheld computing devices may be monitored. There is nothing in this portion or any other portion of Treyz or anywhere in Filler that even suggests a mobile communication phone arranged to determine whether a first and second mobile phone are in the same cell of a cellular mobile communication network.

Applicants further respectfully submit that monitoring if a second phone is in the vicinity would not require that the phone is in the same cell. Column 13, lines 16-37, cited by the Examiner in other rejections describes various local communication paths that do not use cellular communication. Furthermore, it would be obvious to one skilled in the art that two phones in different cells might each be on the perimeter of adjacent cells and still be in the vicinity of each other.

Applicants respectfully submit that this feature is not common knowledge or well known in the art because such a feature is not capable of instant and unquestionable demonstration as being well known. Furthermore, determining whether these features are, or are not common knowledge or well known in the art requires specific knowledge of the prior art which must be supported with a reference.

8. Applicants respectfully submit that claims 44-49, 57, and 59-61 are patentable over the combination of Filler, Yu et al. (US 6,684,087, "Yu") and Treyz under 35 USC 103(a).

The combination of Filler, Yu and Treyz fails to disclose or suggest:

trading or obtaining a digital collectable card associated with a user of a first mobile phone, or associating a digital collectable card data file with a first mobile communication phone,

storing the digital collectable card at the first mobile phone;

detecting whether the second mobile phone is available for trading a digital collectable card, including detecting the availability of a particular digital collectable card; or a request for availability of the digital collectable card data file, and

communicating within an operational range of short range wireless communications directly between the first and second phones for trading the particular digital collectable card,

as substantially recited by claims 45, 57, and 59.

8.1 None of the references disclose or suggest trading or obtaining a digital collectable card associated with a user of a first mobile phone, or associating a digital collectable card data file with a first mobile communication phone. There is no suggestion anywhere of associating a digital collectable card with a mobile phone.

Filler discloses a land based card trading system that is completely silent with respect to mobile phones. Page 2, lines 17-29, cited by the Examiner does not disclose associating a digital collectable card with a mobile phone, but rather discloses associating a digital collectable object with a particular user by registering the user with an identifier, providing user software to the user's computer that uniquely associates the user software with the user, and associating the digital collectable object with the user software to prevent access without the user software and the user identifier. Filler has no disclosure related to associating a digital collectable card with a mobile phone.

Tryez discloses a handheld computing device, but for all the reasons argued above, has no disclosure related a digital collectable trading card, and nothing related to associating a digital collectable card data file with a first mobile communication phone.

Yu is directed to a server that segregates images into smaller portions that may be downloaded to a mobile device for display. On page 15, lines 19-21 of the present action, the Examiner states:

Yu discloses a computer being a mobile cellular phone to enter a cellular mobile communication network and use the Internet to download digital collectable trading cards as an alternative to trading data over wired connections.

Applicants disagree. Yu has no disclosure whatsoever related to using the Internet to download digital collectable trading cards. There is absolutely no disclosure related to digital collectable cards anywhere in Yu. Furthermore, Yu clearly does not disclose using the Internet as an alternative to a wired connection. Yu discloses segmenting images that would normally be unviewable on a mobile device so that a user of the mobile device may navigate among the segments to view the images. Yu is silent with respect to digital collectable cards, and in particular with respect to associating a digital collectable card with a mobile phone.

Furthermore, Yu teaches away from substituting a cellular phone for a desktop computing device. Column 5, lines 8-20 state:

To keep the portability and usability of a mobile device, there are many design constraints, as opposed to those of a desktop computer, including limited maneuvering mechanism, low memory and display capabilities. For example, a typical color image for display on a desktop computer is 640.times.480 that have megabyte data. It would be a forbidden task to download any data of that magnitude in a wireless network.

From the perspective of displaying on a mobile device a color image generated for a desktop computer, it may be understood to those skilled in the art that the mobile device is not a mere replacement of a desktop computing device or a combination of a wireless communication module with a personal computer.

Thus, it would not be obvious to simply substitute a cellular device for a desktop computing device, for example, the desktop devices of Filler.

8.2 None of the references disclose or suggest storing the digital collectible card at the first mobile phone.

Filler is completely silent with respect to mobile phones. Tryez has no disclosure related a digital collectable trading card, and has nothing related to storing a digital collectible card data file at a mobile communication phone. Yu is silent with respect to digital collectable cards, and teaches away from substituting a cellular phone for a desktop computing device.

8.3 None of the references disclose or suggest detecting whether the second mobile phone is available for trading a digital collectable card, or detecting the availability of a particular digital collectable card; or a request for availability of the digital collectable card data file.

As mentioned above, Filler is completely silent with respect to mobile phones. Further, Page 27, line 13 through page 28, line 2, cited by the Examiner, does not disclose or suggest detecting whether the second mobile phone is available for trading a digital collectable card, detecting the availability of a particular digital collectable card; or detecting a request for availability of the digital collectable card data file.

A careful reading of Filler finds that the buying and selling users first agree on the terms of the trade. The seller then communicates which cards are to be traded and the terms of the trade to the server. The server then marks the cards to be traded and sends a transaction identifier to the seller. The seller transmits the identifier to the buyer who logs in and provides the identifier and payment to the server. The server then transfers ownership. It is clear that none of these steps include detecting whether a second mobile phone is available for trading a digital collectable card, detecting the availability of a particular digital collectable card; or detecting a request for availability of the digital collectable card data file.

Tryez has no disclosure related a digital collectable trading card, and in particular has no disclosure related to detecting whether the second mobile phone is available for trading a digital collectable card. Yu is silent with respect to digital collectable cards, and again teaches away from substituting a cellular phone for a desktop computing device.

8.4 None of the references disclose or suggest communicating within an operational range of short range wireless communications directly between the first and second phones for trading the particular digital collectable card.

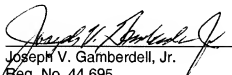
Again, Filler is completely silent with respect to mobile phones. Tryez has no disclosure related a digital collectable trading card, and no disclosure related to trading digital collectable cards. Yu is silent with respect to digital collectable cards, and teaches away from substituting a cellular phone for a desktop computing device.

At least for these reasons, Applicants respectfully submit that the combination of Filler, Yu and Treyz fails to disclose or suggest all the features of independent claims 45, 57, and 59 and therfore fails to render these claims and dependent claims 44, 46-49, 60 and 61 unpatentable.

For all of the foregoing reasons, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record, and are in proper form for allowance. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,


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27 October 2008
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